

FILED 06 AUG 03 14:30 USDC-ORP

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

LEAGUE OF WILDERNESS DEFENDERS-  
BLUE MOUNTAINS BIODIVERSITY  
PROJECT, an Oregon nonprofit  
corporation, and CASCADIA WILDLANDS  
PROJECT, an Oregon nonprofit  
corporation,

CV 04-982-PK

ORDER

Plaintiffs,

v.

UNITED STATES FOREST SERVICE,

Defendants.

MARSH, Judge:

On June 6, 2006, Magistrate Judge Papak issued a Findings and Recommendation (F&R) that plaintiffs' motion for summary judgment (#19) should be denied and defendant's cross-motion for summary judgment (#48) should be granted. Plaintiffs have filed

timely objections and the matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b) on de novo review. See 28 U.S.C. § 636(b)(1)(C); Bhan v. NME Hospitals, Inc., 929 F.2d 1404, 1415 (9th Cir. 1991).

Plaintiffs bring this action under the Administrative Procedure Act (APA), 5 U.S.C. § 706. They allege defendant's Final Supplemental Environmental Impact Statement (FSEIS) regarding the Deep Vegetation Management Project in the Ochoco National Forest and, in particular, defendant's Record of Decision implementing Modified Alternative C of the FSEIS, which would allow commercial logging of 12.8 million board feet of timber on 6,261 acres of forest, failed to comply with the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4331 et seq. Plaintiff's also allege defendant's implementation of Alternative C violates the Ochoco National Forest Land Resource and Management Plan (LMRP), promulgated pursuant to the National Forest Management Act (NFMA), 16 U.S.C. § 1604(a).

Magistrate Judge Papak addressed and rejected each of plaintiffs' contentions in his F&R. Plaintiffs object to the F&R on the grounds that Magistrate Judge Papak afforded too much deference to and essentially "rubber-stamped" defendant's conclusions that it complied with NEPA and the NFMA, erroneously found the administrative record supported defendant's

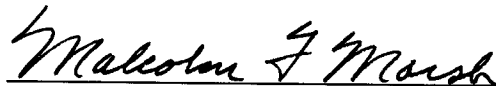
decision to implement Alternative C, and improperly considered materials submitted by defendant even though he stated such materials were not considered.

I have reviewed the record and find Magistrate Judge Papak carefully evaluated the record, addressed plaintiffs' arguments, and made findings and recommendations that are consistent with both the record and the law. I also find the magistrate judge gave appropriate but not undue deference to defendant's expertise. See Klamath-Siskiyou Wildlands Center v. Bureau of Land Management, 387 F.3d 989, 993 (9<sup>th</sup> Cir. 2004) ("Although an agency's actions under NEPA are subject to careful judicial scrutiny, courts must also be mindful to defer to agency expertise, particularly with respect to scientific matters within the purview of the agency.").

Finding no error in the Findings and Recommendation (#105), I adopt them as my own. Plaintiffs' motion for summary judgment (#19) is **DENIED**, and defendant's cross-motion for summary judgment (#48) is **GRANTED**.

IT IS SO ORDERED.

DATED this 2 day of August, 2006.



Malcolm F. Marsh  
Senior United States District Judge